

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 68 of 2000

in

SPECIAL CIVIL APPLICATION No 1922 of 1996

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL TEXTILE CORPN.(GUJ) LTD

Versus

BALBIR VASHIST

Appearance:

MR BR GUPTA for Appellant

MR NAGESH SOOD FOR M/s. TRIVEDI & GUPTA

for Respondent.

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE J.M.PANCHAL

Date of decision: 3.7.2000

C.A.V.JUDGMENT : (Per : Panchal, J.) :

By means of filing this appeal under Clause 15 of the Letters Patent, the appellant - Corporation has challenged legality of judgment dated February 17, 2000, rendered by the learned Single Judge, in Special Civil Application No. 1922/96, by which order dated March 28, 1991 passed by the Chairman-cum-Managing Director of the appellant - Corporation as confirmed by the appellate authority, dismissing the respondent from service, is set aside and the appellant - Corporation is directed to reinstate the respondent in service with all consequential benefits within two months from the date of production of certified copy of the judgment.

2. The respondent was appointed as a Law Officer in the appellant - Corporation. It was noticed by the appellant that before seeking employment with the Corporation, the respondent was working as Retainer Advocate for M/s. Shree Saraswati Spinning Mills, Bhivani, Haryana by using his name as 'Balvir Sharma' and inspite of this, in his bio-data dated April 27, 1984, which was furnished to the Corporation, he had shown his name as 'Balbir Vasisht' instead of 'Balbir Sharma'. This act of the respondent, according to the appellant, amounted to impersonation or concealment of facts and precluded him from getting employment in Public Sector Undertaking. Moreover, it was also noticed by the appellant that while functioning as Law Officer in the Head Office during the year 1988-89, though the respondent had full knowledge about the black listing of M/s. Parco Dye-chem and its sister concerns by the Corporation as well as filing of F.I.R. by the Central Bureau of Investigation against the said firm, the respondent had tendered his legal opinion for payment of dues in favour of the said firm and caused loss to the Corporation. Therefore, the respondent was served with notice dated September 6, 1993 calling upon him to show cause as to why disciplinary action should not be taken against him under the National Textile Corporation (Gujarat) Limited Employees' Conduct, Discipline and Appeal Rules, 1974. The respondent submitted his explanation which was not found to be satisfactory and, therefore, departmental inquiry was conducted against him. At the conclusion of the departmental inquiry, it was held that the charges levelled against the respondent were proved. After submission of report by the Inquiry Officer, the matter was considered by the

Chairman-cumManaging Director of the Corporation, who dismissed the respondent from service by an order dated July 7, 1995. The respondent preferred an appeal before the Board of Directors, which was also dismissed. The order of dismissal as confirmed by the appellate authority was challenged by the respondent in Special Civil Application No. 1922/96. The learned Single Judge concluded that neither the charge of impersonation, nor the charge of causing monetary loss to the Corporation by tendering tinted legal opinion is proved. Therefore, the learned Single Judge has set aside the order dismissing the respondent from service as well as appellate order and directed the appellant to reinstate him in service with all consequential benefits by the impugned judgment, giving rise to the present appeal.

3. We have heard the learned counsel for the parties and taken into consideration the documents forming part of the original petition. The contention that on the basis of list of sitting of the High Court commencing from November 17, 1999 to December 13, 1999, final hearing of matters filed upto 1994 only could have been heard and, therefore, the learned Single Judge was not competent to hear Special Civil Application No.1922/96 with Special Civil Application No.7184/91, has no merits. We may state that Special Civil Application No.7184/91 was filed by the respondent challenging the order by which the respondent was reverted to lower grade. It is not the case of the appellant that the learned Single Judge had no jurisdiction to hear Special Civil Application No. 7184/91. When Special Civil Application No.7184/91 was called out for final hearing, it was mentioned on behalf of the respondent that another petition between the same parties i.e. Special Civil Application No. 1922/96 was also pending and the learned Single Judge was requested to hear both the matters together so as to do complete justice between the parties. Under the circumstances, the learned Single Judge had passed an order directing the office to notify Special Civil Application No. 1922/96 also for final hearing along with Special Civil Application No.7184/91. As observed by the learned Single Judge in the impugned judgment, after the matters were heard for 3 days, an objection was raised on behalf of the appellant that the Court should not hear Special Civil Application No.1922/96. It may be stated that by judicial order, a direction was given to the office to notify Special Civil Application No. 1922/96 on board for final hearing with Special Civil Application No.7184/91 and that judicial direction was never challenged by the appellant before higher forum. The learned counsel for the appellant was

given full opportunity of hearing and was heard at length in both the petitions. Under the circumstances, we are of the opinion that the principle laid down by the Supreme Court in STATE OF RAJASTHAN v. PRAKASHCHAND AND OTHERS, 1997(10), SUPREME TODAY, 122, is not applicable to the facts of the present case and the impugned judgment is not liable to be set aside on the ground that without obtaining prior permission of the Hon'ble the Chief Justice, the learned Single Judge could not have heard Special Civil Application No. 1922/96. The contention, therefore, has no merits and is hereby rejected.

4. The submission that the learned Single Judge could not have appreciated the evidence for coming to the conclusion that the charges of impersonation and causing loss to the Corporation are not proved, has no substance. A reasonable reading of the impugned judgment makes it evident that the learned Single Judge has not appreciated the evidence, but according to the learned Single Judge, no evidence was led to prove the charges levelled against the respondent and the conclusions reached by the authorities are perverse. Under the circumstances, the learned Single Judge has interfered with the disciplinary proceedings and granted reliefs to the respondent.

5. It is not the case of the appellant - Corporation that the respondent and Balbir Sharma who was working as 'Retainer Advocate' for M/s. Shree Saraswati Spinning Mills, Bhivani, Haryana, were different persons. Therefore, the charge of impersonation has no factual basis. The respondent had produced several documents to show that his name was Balbir Vasisht. The Enrolment Certificate dated November 16, 1990 also indicates that the respondent was enrolled as an advocate in the name of Balbir Vasisht. He had also passed Secondary Examination in the year 1963 in the name of Balbir Vasisht. The defence of the respondent was that the charge of impersonation was baseless and in support of that defence, he wanted to examine certain witnesses, namely, (1) Mr. D.P. Agarwal, the then General Manager, (2) Mr. K.V. Rao, the then Director (F), and (iii) Mr. R.V. Chetty, the then C.M.D., who was employed with M/s. Shree Saraswati Spinning Mills, Bhivani, but those witnesses were never summoned during the course of inquiry. It is relevant to notice that in order to substantiate charge of impersonation, no witness was examined from M/s. Shree Saraswati Spinning Mills, Bhivani, nor any attempt was made to establish that the respondent had shown or identified himself as Balbir Sharma in place of Balbir Vasisht. One of the officers

of the appellant Corporation had gone to Bhivani, who was informed by someone from the office of Shree Saraswati Spinning Mills that the respondent was practising in the name of Balbir Sharma. Thus, the whole case of impersonation is based on a bald statement alleged to have been made by some officers of the appellant Corporation, who had made an inquiry in this respect from some official of Shree Saraswati Spinning Mills, Bhivani. The original document i.e. receipt of 1983 issued by Shree Saraswati Spinning Mills, Bhivani is not found on record. Under the circumstances, the learned Single Judge has rightly come to the conclusion that the finding of impersonation recorded against the respondent is based on no evidence and is liable to be set aside. Even if it is assumed that the respondent had mentioned his name as 'Balbir Sharma' when he was retainer of M/s. Shree Saraswati Spinning Mills, it is not pointed out by the appellant as to which undue advantage is obtained by the respondent or that if the respondent had mentioned his name to be Balbir Sharma, he would have been precluded from getting appointment as Law Officer in the appellant-Corporation. On overall view of the matter, we find that the learned Single Judge has rightly concluded that the charge of impersonation is not proved against the respondent because no evidence worth the name was led by the appellant to substantiate the said charge.

6. Again, so far as payment made by the appellant Corporation to the black-listed Company and its sister concerns, is concerned, we notice that M/s. Parco Dye-chem had sent a notice to the appellant - Corporation for recovery of amount of raw materials supplied. On the basis of the said notice, legal advice was sought from the respondent, as he was Law Officer of the Corporation. The respondent had noticed that the goods supplied were raw materials and had been consumed by the units of the appellant- Corporation. On receipt of the notice, the respondent had also sought opinion from M/s. Nanavati & Nanavati Advocates, who is retainer of the appellant Corporation. Mr. Sudhir Nanavati of M/s. Nanavati & Nanavati Advocates had also opined that payment should be made. Under the circumstances, the respondent had recommended payment to be made to M/s. Parco Dye-chem. It is relevant to notice that this was his mere recommendation and not command. The ultimate payment was required to be made by General Manager (F & A). The fact that the Company was black-listed and complaints were lodged by C.B.I. against the said Company, was known to one and all in the Corporation. The opinion obtained from M/s. Nanavati & Nanavati, Advocates was also enclosed by the respondent along with the note which was

forwarded by him to General Manager (F & A). Therefore, the recommendation made by the respondent to make payment to M/s. Parco Dye-chem and its sister concerns cannot be treated as a deliberate attempt on the part of the respondent to cause monetary loss to the appellant Corporation. As is evident, the respondent was not the final authority for giving directions regarding making of payment to the Companies concerned and the higher authorities could have taken a different view of the matter and could have withheld and refused to make payment to the Company in question. Thus, we find that the learned Single Judge was perfectly justified in holding that the charge of causing monetary loss to the appellant- Corporation is not proved. The finding recorded by the disciplinary authority as confirmed by the appellate authority being perverse, is rightly set aside by the learned Single Judge and no ground is made out by the appellant to interfere with the same in the present appeal.

In view of our above discussion, we do not find any substance in the appeal and the appeal is liable to be dismissed.

We may mention that except the grounds which have been noted above, no other ground was urged on behalf of the appellant in support of the appeal.

For the foregoing reasons, the appeal fails and is hereby dismissed, with no order as to costs.

(D.M.Dharmadhikari,C.J.)

(J.M.Panchal, J.)

Learned Counsel prays for stay of the order of this Court, as the appellants propose to appeal to the Supreme Court. Having held that the dismissal order is

bad, we find no ground to grant any interim stay. Prayer
is rejected.

(D.M.Dharmadhikari,C.J.)

3.07.2000 (J.M.Panchal, J.)

(patel)